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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 RYAN CROSS,

11 Plaintiff,

12 v.

13 ROSS, ET AL,

14 Defendant.

CASE NO. 3:18-cv-05186 RJB-JRC

ORDER DENYING  
APPOINTMENT OF COUNSEL

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16 The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate  
17 Judge J. Richard Creatura. Plaintiff Ryan Cross, proceeding *pro se* and *in forma pauperis*, has  
18 pending before the Court a motion for appointment of counsel. Dkt. 46.

19 Although indigent defendants in criminal cases are entitled to appointed counsel, there is  
20 no constitutional right to appointed counsel in a § 1983 civil action. *See Storseth v. Spellman*,  
21 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d  
22 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not  
23 mandatory”). However, in “exceptional circumstances,” a district court may appoint counsel for  
24 indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand*

1 *v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th  
2 Cir. 1998). To decide whether exceptional circumstances exist, the Court must evaluate both “the  
3 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro*  
4 *se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328,  
5 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff  
6 must plead facts showing he has an insufficient grasp of his case or the legal issues involved and  
7 an inadequate ability to articulate the factual basis of his claims. *Agyeman v. Corrections Corp.*  
8 *of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

9 Plaintiff, who alleges a soy allergy, has asserted that defendants have violated his rights  
10 by denying him a soy-free diet. Dkt. 18, p. 3. Plaintiff made a motion for summary judgment,  
11 which this Court recommended be denied because whether or not plaintiff suffered from a soy  
12 allergy was still an issue of material fact. Dkts. 38, 41, 50. Subsequently, defendants filed a  
13 motion for summary judgment. Dkt. 53. Because this Court has not yet made a recommendation  
14 on defendant’s motion for summary judgment, it is too early to determine the likelihood of  
15 plaintiff’s success on the merits of his claim.

16 Further, plaintiff has not shown that he has an insufficient grasp of either the factual or  
17 legal basis for his claim. On the contrary, plaintiff is articulate and able to describe the alleged  
18 wrongs and the legal principles underlying them in a way that is understandable to the Court at  
19 this time. Plaintiff has filed multiple motions, many of which are duplicative. While this Court  
20 does not condone duplicative motions, and some of plaintiff’s pleadings demonstrate his lack of  
21 legal training, he appears to be able to articulate himself and understand, to a basic degree, the  
22 legal underpinnings of his case. It further demonstrates plaintiff’s ability to maintain awareness  
23 of the developments in his case and respond to defendant’s motions. Though it may be easier for  
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1 plaintiff to prosecute his case with the assistance of counsel, convenience alone is not enough to  
2 warrant appointment of counsel. Because of this, plaintiff has not demonstrated the exceptional  
3 circumstances necessary to for the Court to order appointment of counsel.

4 Therefore, for the reasons stated above, plaintiff's motion to appoint counsel (Dkt. 46) is  
5 denied without prejudice, which means that the Court can consider such a motion at a later time  
6 after the case has developed further.

7 Dated this 1st day of November, 2018.

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11 J. Richard Creatura  
12 United States Magistrate Judge  
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